

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

JUL 30 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Received

AUG 2 2001

In the Matter of)
)
Application of DIRECTV Enterprises, Inc.)
for Authority to Launch and Operate)
DIRECTV 4S (USABSS-13))

File No. S2430

SAT-LOA-200105108-00045

Satellite Policy Branch
International Affairs

OPPOSITION OF DIRECTV ENTERPRISES, INC. AND
REQUEST FOR SUMMARY DISMISSAL

DIRECTV Enterprises, Inc.¹ hereby opposes the Petition of Northpoint Technology, Ltd., and Broadwave USA, Inc., to Stay Proceedings Pending Receipt and Analysis of Data Regarding Strength of Planned Signals ("Northpoint Petition"), filed in connection with the above-captioned application of DIRECTV to launch and operate its new spot-beam DBS satellite, DIRECTV 4S. The Northpoint Petition is without merit and should be summarily dismissed.

The Northpoint Petition requests the Commission to stay the processing of the DIRECTV 4S application while Northpoint attempts to obtain data submitted by DIRECTV for the Commission's use in processing the DIRECTV 4S application, and subsequently forms a "definitive opinion on the merits of DIRECTV's application."² Northpoint's ultimate "opinion" as to the merits of DIRECTV's spot-beam satellite application, however, is irrelevant. It can provide no basis for opposing the DIRECTV 4S application even when it is formed, because Northpoint has not demonstrated that it is a "party in interest" with standing under Section 309(d)(1) of the Communications Act to oppose or request action that would delay the

¹ DIRECTV is a licensee in the DBS service and a wholly-owned subsidiary of Hughes Electronics Corporation.

² Northpoint Petition at 2.

processing of the DIRECTV 4S application. Northpoint is not a licensee of any existing wireless service and, to DIRECTV's knowledge, has no operating business. If the service that Northpoint proposes *is* ever authorized in the 12.2-12.7 GHz band that DIRECTV currently uses to downlink programming to its subscribers (and DIRECTV reiterates that Northpoint should not be so authorized), Northpoint has admitted that its service will be required to be secondary to primary DBS operations.³ Thus, Northpoint has not shown how it could possibly be harmed economically by the grant of the DIRECTV 4S application, and can never claim harm from electrical interference if such a grant occurs. With no basis proffered for establishing either economic injury or the potential for electrical interference, Northpoint is not a "party in interest" here, and its petition should be dismissed.⁴

Significantly, no other party has petitioned against the DIRECTV 4S application. Even Northpoint does not dispute the strong public interest benefits that will attend the enhancement of DIRECTV's ability to provide local-into-local service to subscribers, and correspondingly, more vigorous competition to incumbent cable operators.⁵ Those benefits should not be delayed,

³ See, e.g., Reply Comments of Northpoint Technology, Ltd. and Broadwave USA, Inc. on MITRE Corporation Report, ET Docket No. 98-206 (May 23, 2001), at 18 (stating that, as a proposed secondary service, Northpoint "confirms" and "honors" the primary status of DBS operators).

⁴ See, e.g., MCI Telecommunications Corporation and EchoStar 110 Corporation, *Order and Authorization*, 1999 FCC LEXIS 3698 (1999), ¶ 30 n.81 (denying standing to Primetime 24 where no injury or other basis was shown to oppose application); *The Evening Star Broadcasting Co.*, 68 FCC 2d 129, 136, *vacated on other grounds*, 677 F.2d 1503 (1978) (no standing where party met none of established grounds for opposing application, such as electrical interference or economic injury).

⁵ Indeed, Northpoint itself has previously acknowledged the important public interest benefits of "level[ing] the playing field for DBS to compete against cable operators" and "promot[ing] localism" via the carriage of local broadcast channels. See Northpoint Technology, *Petition for Rule Making* (March 6, 1998), at 2, 6-10.

regardless of whether the Commission can or should accede to Northpoint's information request.⁶
That question is beside the point from the standpoint of processing the DIRECTV 4S application.
DIRECTV therefore requests that the Northpoint Petition be summarily dismissed, and that the
DIRECTV 4S application be expeditiously processed and granted.

Respectfully submitted,

DIRECTV Enterprises, Inc.

By: 

Gary M. Epstein

James H. Barker

LATHAM & WATKINS

555 Eleventh Street, N.W.

Suite 1000

Washington, D.C. 20004

(202) 637-2200

Counsel for DIRECTV Enterprises, Inc.

July 30, 2001

⁶ DIRECTV is still evaluating the legal propriety and ramifications of Northpoint's information request.